

## § 1786.208

this section shall be required for refinancing or prepayment under this section.

(2) In the case of a loan advanced under an agreement that permits the refinancing or prepayment of the loan advance based on the payment of 1 year of interest on the outstanding principal balance of the loan advance, a borrower may, in lieu of the premium required by paragraph (a)(1) of this section, pay a premium as provided by:

(i) Paragraph (a)(2) of this section, if the loan advance has reached the 12-year maturity required under the loan agreement for the refinancing or prepayment; or

(ii) Paragraph (a)(3) of this section, if the loan advance has not reached the 12-year maturity required under the loan agreement for the refinancing or prepayment.

### § 1786.208 Increased principal.

A borrower can meet the premium requirements by increasing the outstanding principal balance of the loan advance that is being refinanced. If it does so the borrower shall make a payment at the time of the refinancing equal to 2.5 percent of the amount of the premium that is added to the outstanding principal balance of the loan.

### § 1786.209 Outstanding loan documents.

(a) Except as expressly provided in this subpart, the borrower shall comply with all provisions of its RUS loan contract, its outstanding notes issued to RUS, and the RUS mortgage.

(b) Nothing in this subpart shall affect any rights of supplemental lenders under the RUS mortgage or the rights of any other creditors of the borrower.

(c) Nothing in this subpart shall prohibit a borrower from making prepayments on any loans pursuant to the RE Act in accordance with the terms thereof or as may be otherwise permitted by law.

### § 1786.210 Approvals.

The borrower shall be responsible for obtaining all approvals necessary to consummate the transaction as required by the refinancing note, including such approvals as may be required by regulatory bodies and other lenders.

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### PART 1788—RUS FIDELITY AND INSURANCE REQUIREMENTS FOR ELECTRIC AND TELEPHONE BORROWERS

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EXHIBIT A TO PART 1788—RURAL UTILITIES  
SERVICE ENDORSEMENT

EXHIBIT B TO PART 1788—RURAL UTILITIES  
SERVICE JOINT INSURED

AUTHORITY: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*; Pub. L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

SOURCE: 51 FR 25855, July 17, 1986, unless otherwise noted.

### Subpart A—General Policies and Procedures

#### § 1788.1 General.

This part sets forth general Rural Utilities Service (RUS) policy and requirements for minimum insurance and fidelity coverage for electric and telephone borrowers and provides information for borrowers to meet those requirements.

#### § 1788.2 Policy.

(a) *Specific coverages required.* RUS mortgage provisions require that borrowers procure specific minimum insurance and fidelity coverage and that they maintain this coverage as long as the loan or guaranteed loan remains unpaid.

(b) *Evidence of coverage.* Borrowers shall furnish RUS satisfactory evidence that required insurance and fidelity coverage is being continuously maintained.

(c) *Excess coverage.* Borrowers may purchase insurance or fidelity coverage in excess of the RUS requirements.

(d) *Borrower responsibility.* Procurement of insurance and fidelity coverage is the primary responsibility of the borrower.

(1) The borrower shall purchase required coverages from companies of the borrower's choice, provided the companies selected are licensed to do business in the state, or states, in which the borrower operates.

(2) The required insurance and fidelity bond coverage shall be in accordance with acceptable insurance industry types of bonds and policies.

(3) If a borrower fails to purchase or maintain the required insurance and fidelity coverages, the mortgagees may place required insurance and fidelity coverage on behalf and in the name of the borrower. The borrower shall pay the cost of this coverage, as provided in the loan documents.

(e) *Losses not covered.* In the event of a loss not covered because of a deductible provision in an insurance policy, the borrower should treat the loss as an expense in the year in which it occurs if provision has not been made for such losses in an insurance reserve account. If an insurance reserve has been established, the amount of the loss should be charged directly against that account. Ordinarily, losses not covered because of a deductible provision can be absorbed as current operating costs. A reserve account may be established to provide for losses which would be excluded because of a deductible and the following guidelines are recommended:

(1) The reserve balance at any one time should not exceed the total of the deductibles in the borrower's insurance policies.

(2) The annual credit to the reserve account should not exceed one-tenth of the maximum reserve balance, as set forth above, or a lesser amount needed to maintain the reserve at the maximum level.

(3) No reserve should be considered for losses to outside plant or for other coverages not required by RUS.

(4) Accounts used for such reserves shall be as specified in the applicable Uniform System of Accounts.

#### § 1788.3 Certification of insurance coverage.

Borrowers shall furnish written evidence to RUS within sixty (60) days of the close of each calendar year stating that during such year all insurance required by this part 1788 was in force and renewals have been obtained for all policies. The annual certification will be subject to audit verification.

#### § 1788.4 New borrowers' procedure.

New borrowers shall furnish RUS, by letter, a schedule of their insurance policies in force, showing the name of the insurance company, specific type of policy, policy number, expiration date,

and the amounts of coverage. In the case of fire insurance policies, new borrowers shall specify amounts of coverage (building, contents) and a complete description of the locations. For workers' compensation, in those states where a state agency administers the workers' compensation fund, new borrowers shall provide the file or account number in lieu of a policy number.

**§ 1788.5 RUS endorsement required.**

(a) Each insurance policy, other than fidelity bonds or policies, purchased by borrowers to meet the requirements of RUS shall contain the following RUS Endorsement:

The insurer agrees with the Rural Utilities Service as follows:

1. That this endorsement forms a part of the original policy.
2. Changes in policy forms or endorsements, as a result of approval by a regulatory authority, will be submitted to the Rural Utilities Service prior to use for a borrower of said Administration.
3. That it will mail to said Administration, at least 10 days before the effective date thereof, notice of cancellation or termination of said policy.
4. That each endorsement subsequently issued will become a part of said original policy.

(b) When the RUS Borrower is a subsidiary of a parent corporation, RUS requires the following endorsement for policies covering subsidiary companies be included as a part of each public liability and fire policy.

The Insurer agrees with the Rural Utilities Service, as follows:

1. That this endorsement forms a part of the original policy.
2. Changes in policy forms or endorsements, as a result of approval by a regulatory authority, will be submitted to the Rural Utilities Service prior to use for a borrower of said Administration.
3. That it will mail to said Administration, at least ten days before the effective date thereof, notice of cancellation or termination of said policy, or cessation of coverage for any reason or subsidiary of the assured which is a borrower from the administration.
4. That each endorsement subsequently issued will become a part of said original policy.

(c) In the case of a cooperative or mutual organization, RUS requires that the following: "Endorsement

Waiving Immunity From Tort Liability" be included as a part of each public liability, owned, nonowned, hired automobile, and aircraft liability, employers' liability policy, and boiler policy:

The Insurer agrees with the Rural Utilities Service that such insurance as is afforded by the policy applies subject to the following provisions:

1. The company agrees that it will not use, either in the adjustment of claims or in the defense of suits against the Insured, the immunity of the Insured from tort liability, unless requested by the Insured to interpose such defense.
2. The Insured agrees that the waiver of the defense of immunity shall not subject the company to liability of any portion of a claim, verdict or judgment in excess of the limits of liability stated in the policy.
3. The company agrees that if the Insured is relieved of liability because of its immunity, either by interposition of such defense at the request of the Insured or by voluntary action of a court, the insurance applicable to the injuries on which such suit is based, to the extent to which it would otherwise have been available to the Insured, shall apply to officers and employees of the Insured in their capacity as such; provided that all defenses other than immunity from tort liability which would be available to the company but for said immunity in suits against the Insured or against the company under the policy shall be available to the company with respect to such officers and employees in suits against such officers and employees or against the company under the policy.

**§ 1788.6 Analysis of deductibles.**

When deductibles are considered, careful analysis should be given to the size of the deductible and its effect on the financial position of the borrower. A periodic review should be made of the policy to determine the economy and advisability of continuing the deductible.

**§ 1788.7 Specialized requirements.**

Borrowers with specialized requirements or equipment, such as nuclear facilities, private generation connection, hydro, solar, wind, watercraft, and aircraft, or who do not operate their own systems, will be advised of RUS insurance requirements in each specific case.

**§ 1788.8 Procedure for fidelity notices and claims.**

Upon discovery by the borrower or RUS of any fraudulent or dishonest act of any officer, employee, or collection agent, the borrower shall notify the bonding company of such discovery promptly in writing. Such notice, a copy of which shall be sent immediately to RUS and each supplemental lender, shall be given on behalf of both the borrower and RUS. If a proof of loss is filed, it shall also be filed on behalf of both the borrower and RUS. A copy of the proof of loss, if any, shall be sent immediately to RUS and each supplemental lender by the borrower.

**§ 1788.9 Recovering claims.**

The borrower shall, when necessary to protect all rights under the fidelity bond, initiate suit against the insurance company to recover all claims.

**§ 1788.10 Reporting accidents.**

Borrowers shall promptly provide the insurance company providing coverage a written report of all accidents involving injury to persons, damage to the property of others, or direct damage to the insured property of the borrower and forward at the same time a copy of all reports except those involving only employees of the borrower to RUS and each supplemental lender.

**§ 1788.11 Reporting claims to RUS.**

The borrower shall furnish RUS and each supplemental lender a copy of any claim submitted to an insurance company seeking recovery of loss for damage or destruction of property.

**§ 1788.12 Use of insurance proceeds.**

In the event of damage, loss, or destruction of property mortgaged to the government covered by insurance, the borrower shall repair or replace the damaged, lost, or destroyed property so that the property is in substantially the same condition as before the damage, loss, or destruction. Unless mortgagees direct otherwise, the proceeds of the insurance shall be used for that purpose.

**§ 1788.13 Package-type policies.**

RUS recommends that borrowers secure broad form, package-type policies (special multi-peril, combined fire, and boiler), when possible, combining all or as many as many as possible of the various coverages into a single policy to reduce the number of policies issued by individual insurance companies and to avoid any question between the insurance companies about responsibility.

**§ 1788.14 Obtaining minimum cost.**

Borrowers should request proposals from several companies, both stock and mutual, for initial and renewal of insurance policies to obtain a minimum cost for their insurance. Borrowers should maintain an accurate loss record for all insurance coverages to establish trends and evaluate the effect of losses on premiums.

**§ 1788.15 Type of policies.**

RUS recommends term policies, either 1- or 3-years, for insuring buildings, contents, stock, and equipment and reporting policies for insuring fluctuating material inventories.

**§ 1788.16 Telephone building rates.**

Telephone borrowers should investigate the possibility of having the building fire rate applied to both the buildings and contents in those states that permit the single rate. Buildings and contents coverages should be combined in the same policy.

**§ 1788.17 Coinsurance recommended.**

RUS recommends coinsurance where it is available. In accepting a policy with a coinsurance clause, the insured agrees to maintain insurance in an amount equal to at least a percentage of the actual cash value stated in the coinsurance clause.

**§ 1788.18 Advantageous fire rates.**

To eliminate delays and costly alterations, and to secure the most advantageous fire rates for buildings (generation plants, headquarters buildings, etc.) borrowers should have plans and specifications for buildings reviewed by the state fire rating bureau, the insurance agent of record, or competent,

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independent consultant for their recommendations.

**Subpart B—Specific RUS Minimum Requirements**

**§ 1788.19 General.**

This subpart sets forth specific RUS minimum requirements for insurance and fidelity coverages for electric and telephone borrowers.

**§ 1788.20 Officers and employees.**

Borrowers shall provide fidelity coverage for each officer and employee based on the estimated annual gross revenue of the borrower.

**§ 1788.21 Types of coverage.**

A new Commercial Crime Policy came into use January 1, 1986. This new policy form should be used in lieu of the Blanket Position Bond or Comprehensive 3D policies.

Under this Commercial Crime Policy the amounts of coverage required are as follows:

Annual gross revenue	Amounts of coverage
Less than \$200,000 .....	\$50,000
\$200,001 to 400,000 .....	100,000
400,001 to 600,000 .....	250,000
600,001 to 800,000 .....	300,000
800,001 to 1,000,000 .....	400,000
1,000,001 and over .....	500,000

The Rural Utilities Service Endorsement, Exhibit A, is necessary on all separate policies or where the fidelity coverage is added to a package policy. For a municipal borrower, a public employees' blanket bond covering employees and officers responsible for activities of the RUS-financed facilities is acceptable.

**§ 1788.22 Collection agents.**

Each collection agent of the borrower shall be included in the bond for not less than \$2,500, or 10 percent of the highest amount collected annually by any one collection agent, whichever is greater. When banks are designated as collection agents, borrowers shall advise RUS regarding any special arrangements for fidelity coverage.

When annual gross revenues for a previous twelve-month period exceed the limit for the amount of fidelity

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coverage maintained, the borrower shall increase the coverage to the required amount.

**§ 1788.23 When revenues exceed \$1 million.**

When annual gross revenues exceed \$1 million, RUS recommends that borrowers obtain additional excess fidelity insurance.

**§ 1788.24 Single bond provisions.**

When the borrower is one of several affiliated companies and this coverage is provided by naming the borrower as one of several insureds under a single policy, the joint insured paragraph under general or insuring agreements shall be amended to include the provisions of the fidelity rider in exhibit B.

**§ 1788.25 Responsibilities of borrowers.**

(a) *Termination of fidelity coverage.* The new Comprehensive Crime Policy provides for fidelity coverage on a term basis. Borrowers should renew on a timely basis.

(b) *Effect of fraudulent or dishonest acts.* Upon discovery by the borrower or RUS of an fraudulent or dishonest act of any officer or employee, fidelity coverage for this person is automatically cancelled, but remains in effect for all other officers and employees not in collusion with this person. Therefore, borrowers must notify their fidelity insurer of the discovery.

(c) *Effect of borrower's inaction.* Upon discovery of a dishonest act, the borrower's inaction, by its failure to report such acts, whether motivated by restitution or the apparent insignificance of the amount involved, or for any other reason, can affect more than merely the validity of the present claim; it may bar some future loss of real significance caused by the same person.

(d) *Avoiding future risks.* To avoid this risk of future uninsured loss, the borrower shall obtain written assurance of continued coverage for that individual by the same or another bonding company.

(e) *Disclosure of dishonest acts.* Assurance of continued coverage, to be effective, requires the borrower to make full disclosure to the bonding company

of the dishonest or fraudulent acts. This disclosure, however, need not be of the same degree required to establish a claim under a proof of loss or conviction of a false report violation.

**§ 1788.26 Disbursement of recovered sums.**

Sums recovered under any fidelity bond by the borrower for a loss of funds advanced under the notes or recovered by the government for any loss under such bond shall, unless otherwise directed by the mortgagees, be applied to the prepayment of indebtedness pro rata on the notes secured by the mortgage or to construct or acquire facilities, approved by the mortgagees, which will become part of the mortgaged property.

**§ 1788.27 Requirements of coverage.**

Workers' compensation and employers' liability insurance covering all employees of the borrower shall be maintained by borrowers in amounts required by law. If the borrower or any of its employees is not subject to the workers' compensation laws of the state, or states, in which the borrower conducts its operations, then its workers' compensation policy shall provide voluntary compensation coverage to the same extent as though the borrower and its employees were subject to such laws. The policy shall include:

- (a) Occupational disease liability.
- (b) Employers' liability insurance.
- (c) "Additional medical" coverage of not less than \$10,000 in those states where full medical coverage is not statutory.

When employers' liability insurance is provided by a separate policy issued to a cooperative or mutual organization, it shall include "Endorsement Waiving Immunity From Tort Liability." See 1788.5(c).

**§ 1788.28 Limits required.**

RUS requires that public liability insurance be maintained covering the ownership liability and all operations of the borrower with limits for bodily injury or death of not less than \$1 million each occurrence—\$1 million aggregate per policy period and with limits for property damage of not less than \$1 million per occurrence and \$1 million

aggregate for the policy period. Borrowers have the option to purchase a \$1 million single limit coverage for bodily injury and property damage. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

**§ 1788.29 Contractual liability insurance.**

Contractual liability insurance shall be included as part of the public liability policy when the borrower executes an agreement or contract in which it assumes additional liability. The provisions of any "hold harmless" agreement should be referred to the borrower's insurance company for specific references in the policy.

**§ 1788.30 Provision on explosives.**

When explosives are used by employees of the borrower, the property damage exclusion clause for blasting shall be deleted.

**§ 1788.31 Buried plant provision.**

Borrowers contemplating construction of buried plant shall immediately obtain an endorsement from their insurance carrier deleting the exclusion in the standard public liability insurance policy which provides that the policy does not apply to injury to, or destruction of, wires, pipes, conduits, mains, sewers, or other similar property below the surface of the ground if the injury or destruction is caused by, or occurs during, the use of mechanical equipment for the purpose of excavating or drilling. For electric borrowers the rating classification includes this coverage automatically.

**§ 1788.32 Appliance sales coverage.**

When there are retail sales, repair, or installations of electrical appliances involved in borrowers' operations, borrowers shall purchase product liability damage.

**§ 1788.33 Railroad right-of-way exclusion.**

General liability policies in use contain a restriction pertaining to easement agreements involving construction on or adjacent to a railroad which are not automatically covered. Where

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construction is on a railroad right-of-way under an easement, borrowers shall purchase a general liability policy that specifically includes this necessary insurance coverage.

#### § 1788.34 Pollution exclusion.

Liability policy forms exclude coverage for "bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants. Borrowers may wish to discuss this exclusion with their insurance companies.

#### § 1788.35 Liability requirements.

RUS requires borrowers have liability insurance on all motor vehicles, trailers, semitrailers, and aircraft used in the conduct of the borrower's business, whether owned, nonowned, or hired by the borrower, with bodily injury limits of not less than \$1 million for each person and \$1 million for each occurrence, and property damage limits of \$1 million for each occurrence; in connection with aircraft liability, also passenger bodily injury limits of \$1 million per person and \$1 million for each occurrence.

#### § 1788.36 Comprehensive requirements. requirements.

RUS requires borrowers have comprehensive or separate fire, theft, and windstorm insurance on all owned motor vehicles, trailers, and aircraft having a unit value in excess of \$1,000. The amount of coverage shall not be less than the actual cash value of the property insured.

#### § 1788.37 Coverage requirement.

Borrowers shall have fire insurance, including the extended coverage endorsement, on each building and its contents, and on each storage location of materials, supplies, poles, and cross-arms having a value at any one location in excess of \$5,000, or in excess of 1 percent of the total plant value, whichever is larger. Such coverage shall be in an amount of not less than 80 percent of the current cost to replace the property new, less depreciation. Surveys should be conducted periodically, every two years at a mini-

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mum, to establish property values on an actual cash value basis.

#### § 1788.38 RUS endorsement.

When the borrower is one of several affiliated companies and the coverage is provided by naming the borrower as one of several insureds under a single policy, the policy shall be amended to include the provisions of the RUS Endorsement in § 1788.5(b).

#### § 1788.39 Types of fire insurance policies.

A fire insurance policy may be written on the following basis:

(a) Specified amount basis.

(b) Blanket form basis.

(c) Monthly reporting form basis. The reporting type of policy should include the limit of liability for each location. Whenever it appears that the value at any one location may exceed the limit of liability included in the policy, an endorsement to the policy should be promptly secured increasing the limit of liability for that particular location.

(d) Inland Marine Floater basis. Floater form policies on an all-risk basis are recommended to provide coverage for construction equipment, radio/telephone equipment, and pay stations furnished for use by subscribers and located on their premises or vehicles, and for radio or telephone equipment installed in borrowers' vehicles, for equipment being transported, and for materials stored at various locations.

#### § 1788.40 Coverage requirement.

Borrowers shall purchase and maintain flood insurance for buildings in flood hazard areas to the extent available and required under the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 (Pub. L. 93-234). The insurance should cover, in addition to the building, any machinery, equipment, fixtures, and furnishings contained in the building.

#### § 1788.41 Endorsements required.

The National Flood Insurance Program provides for a standard flood insurance policy; however, other existing insurance policies which provide flood

coverages may be used where flood insurance is available in lieu of the standard flood insurance policy. Such policies, in order to satisfy the insurance requirements of section 102 of the Flood Disaster Protection Act of 1973, should be endorsed to provide:

(a) That the insurer give 30 days written notice of cancellation or non-renewal to the insured with respect to the flood insurance coverage. To be effective, such notice must be mailed to both the insured and the lender or Federal agency and must include information as to the availability of flood insurance coverage under the National Flood Insurance Program, and

(b) That the flood insurance coverage offered by the insurer is at least as broad as the coverage offered by the Standard Flood Insurance Policy.

**§ 1788.42 Coverage requirement.**

Electric borrowers having steam generating facilities shall maintain boiler and machinery insurance. Electric borrowers having internal combustion, gas turbine or hydro-generating facilities shall maintain machinery insurance. The limit for each accident shall not be less than the actual current cash value of the property of the borrower and of the adjacent property that would be damaged by explosion or breakdown of the insured object.

**§ 1788.43 Suspension notice.**

The standard RUS Endorsement, see § 1788.5(a), should be amended to provide written notice of suspension to RUS in the event of suspension of coverage.

**§ 1788.44 Annual inspection report.**

Borrowers shall provide RUS a copy of the annual inspection report by the insurance company's engineer.

**§ 1788.45 Modifications considered.**

When requested by the borrower and if loan security is not jeopardized, RUS will consider modifying the boiler and machinery insurance requirements for those borrowers with special or unusual circumstances, such as limited planned annual use of generating facilities, or where the value of generating facilities at a location is less than \$1 million.

**Subpart C—Insurance for Contractors, Engineers and Architects**

**§ 1788.46 General.**

This part sets forth RUS policy on minimum insurance requirements for contractors, engineers, and architects performing work under contracts with borrowers, and requirements for bonds to be furnished by contractors.

**§ 1788.47 Policy requirements.**

(a) Contractors, engineers, and architects performing work for borrowers under construction, engineering and architectural service contracts shall obtain insurance coverage, as required in § 1788.51, and maintain it in effect until work under the contracts is completed.

(b) Contractors entering into construction contracts with borrowers shall furnish a contractors' bond, except as provided for in § 1788.52, covering all of the contractors' undertaking under the contract.

(c) Borrowers shall make sure that their contractors, engineers, and architects comply with the insurance and bond requirements of their contracts.

**§ 1788.48 Contract requirements.**

Contracts entered into between borrowers and contractors, engineers, and architects shall provide that they take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than \$1 million each occurrence, limits for property damage



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of not less than \$1 million each occurrence, and \$1 million aggregate for accidents during the policy period. A single limit of \$1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than \$1 million per person and \$1 million per occurrence, and property damage limits of \$1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

#### **§ 1788.49 Bond requirements.**

Construction contracts for facilities in amounts in excess of \$100,000 shall require contractors to secure a contractors' bond on a form approved by the Administrator attached to the contract in a penal sum of not less than the contract price, which is the sum of all labor and materials including owner-furnished materials installed in the project. RUS Form 168b is for use when the contract exceeds \$100,000. RUS Form 168c is for use when the contractor's surety has accepted a Small Business Administration guarantee and the contract is for \$1 million or less. On line extension contracts under which work will be done in sections and no section will exceed a total cost of \$100,000, the borrower may waive the requirement for a contractors' bond.

#### **§ 1788.50 Acceptable sureties.**

Surety companies providing contractors' bonds shall be listed as acceptable sureties in the U.S. Department of Treasury Circular No. 570. A copy of the executed bond shall be furnished RUS. For construction contracts, other than buildings, amounting to \$100,000 or less, the borrower shall determine whether a contractors' bond is required.

#### **§ 1788.51 Borrower options.**

For construction contracts for buildings amounting to \$100,000 or less, the

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borrower has the option to require the contractors to furnish:

- (a) A contractors' bond, as described in §§ 1788.52 and 1788.53, or
- (b) A builders' risk policy.

#### **§ 1788.52 Builders' risk policy.**

The builders' risk policy shall be on a completed value form, effective from the date equipment or material is first delivered to the building site, and shall name both the borrower and the contractors as insureds.

(a) The policy shall insure against loss by fire or lightning and the named perils in the extended coverage endorsement.

(b) The amount of coverage shall be not less than the actual cash value of the property constructed, including all materials to be used in the construction and stored at the site, whether furnished by the borrower or the contractor.

#### **§ 1788.53 Major equipment insurance.**

When a borrower contracts for the installation of major equipment by other than the supplier or for the moving of major equipment from one location to another, RUS recommends that these contracts require the contractor to furnish the borrower with an installation floater policy. The policy should cover all risks of damage to the equipment until completion of the installation contract.

#### **§ 1788.54 Compliance with contracts.**

It is the responsibility of the borrower to make sure, before the commencement of work, that the engineer, architect, and the contractor have insurance which complies with their contract requirements. Compliance with contract requirements should be a certificate signed by a representative of the insurance company, including a provision that no change in, or cancellation of, any policy listed in the certificate will be made without prior written notice to the borrower.

#### **§ 1788.55 Providing RUS evidence.**

When RUS shall specifically so direct, the borrower shall also require the engineer, the architect, or the contractor to forward to RUS evidence of

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compliance with their contract requirements. The evidence shall be in the form of a certificate of insurance signed by a representative of the insurance company and include a provision that no change in, or cancellation of, any policy listed in the certificate will be made without the prior written notice to the borrower and to RUS.

EXHIBIT A TO PART 1788—RURAL  
UTILITIES SERVICE ENDORSEMENT

POLICY NUMBER: \_\_\_\_\_

COMMERCIAL CRIME

This endorsement applies to all forms forming part of the Commercial Crime Policy.

*Employee Dishonesty Coverage Form*

The Employee Dishonesty Coverage Form is amended by deleting the Cancellation As to Any Employee section and by substituting the following:

*Cancellation as to any Employee*

Coverage for any Employee shall be deemed cancelled (a) immediately upon discovery by you, or by any of your partners or officers thereof not in collusion with such Employee, or by the Administration of any dishonest act on the part of such Employee (b) at 12:01 a.m., standard time, upon the effective date specified in a written notice served upon you and the Administration or sent by registered mail to you and the Administration.

*Crime General Provisions Form*

B. General Conditions:

1. Section 4 is replaced by the following:

*Duties in the Event of Loss*

After you or the Rural Utilities Service of the United States of America (the Administration) discover a loss or situation that may result in a loss of, or loss from damage to, Covered Property either you or the Administration must:

- a. Notify us as soon as possible.
- b. Submit to examination under oath at our request and give us a signed statement of answers.
- c. Give us a detailed, sworn proof of loss within four months.
- d. Cooperate with us in the investigation and settlement of any claim.

Prior discovery of loss by you shall not affect the right of the Administration to notify us of loss, and to file proof of loss even though such prior discovery by you may have occurred more than four months prior to the discovery of the loss by the Administration.

2. Section 6 is replaced by the following:

Legal Action Against Us: You or the Administration may not bring legal action against us involving loss:

- a. Unless all the terms of this insurance have been complied with.
- b. Until 60 days after proof of loss has been filed with us.
- c. Unless brought within two years from the date the loss is discovered by you or the Administration.

3. Section 16 is replaced by the following:

*Territory:* This insurance covers only acts committed or events occurring within the United States of America, U.S. Virgin Islands, Puerto Rico, Canal Zone, Guam, Micronesia, or Canada.

A new section 19 is added to read as follows:

Any action, approval or consent which by the provisions of this Policy is required to be taken or signed by the Administration shall be effective if taken or signed by the Administrator of the Administration or by his authorized representative.

A new section 20 is added to read as follows:

Discovery by you shall be deemed to mean discovery by any officer or employee of the Insured not in collusion with the employee responsible for the loss discovered, and discovery by the Administration shall be deemed to mean discovery by any employee, agent or attorney of the Administration not in collusion with the employee responsible for the loss discovered.

C. General Definitions:

"Employee" also includes non-salaried officers and collection agents in your service.

*Common Policy Conditions*

A. Cancellation:

1. Paragraph 2 is replaced by the following:  
We may cancel this policy by mailing or delivering to the first Named Insured and to the Administration written notice of cancellation at least:

- a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- b. 30 days before the effective date of cancellation if we cancel for any other reason.

A new section G is added to read as follows:

G. Notices:

1. It is agreed that settlement of any claim under this Policy shall be made check or draft payable to you, but no settlement shall be made without prior written approval of the Administration. It is further agreed if you cancel this Policy, the Administration may, within ten days after we receive such notice from you, advise us that the cancellation notice is inoperative. In such case, coverage shall continue as if such notice of cancellation had never been sent. Notices, approvals, and requests by the provisions of this Policy shall be sent as follows:

- a. To us, at our home office.
- b. To you, addressed to you at the city or town at which your principal office is located.
- c. To the Administration, addressed to the Rural Utilities Service, United States Department of Agriculture, South Building, Washington, DC, 20250.

#### EXHIBIT B TO PART 1788—RURAL UTILITIES SERVICE JOINT INSURED

This Endorsement applies to the CRIME GENERAL PROVISIONS FORM and all Crime Coverage forms forming part of the policy.

##### PROVISIONS

1. Section 5.a of the the CRIME GENERAL PROVISIONS FORM is amended by adding the following:

Payment by us will be made to the first named insured for the use and benefit of the insured sustaining the loss.

2. Section 5.b is amended by deleting the period at the end thereof and adding the following:

, except that in the case of a borrowing corporation from the Rural Utilities Service knowledge of any information relevant to this insurance shall be deemed knowledge of such information by the Insured sustaining the loss.

3. Section 2.a of the EMPLOYEE DISHONESTY COVERAGE FORM is replaced by the following:

Immediately upon discovery by:

- (1) The Rural Utilities Service;
- (2) The borrowing corporation employing such "employee"; or
- (3) Any of the partners, officers or directors of the Administration or the borrowing corporation not in collusion with the "employee"; of any dishonest act committed by that "employee" whether before or after becoming employed by the borrowing corporation.

#### PART 1789—USE OF CONSULTANTS FUNDED BY BORROWERS

##### Subpart A—Policy and Procedures With Respect to Consultant Services Funded by Borrowers—General

###### Sec.

- 1789.150 Purpose.
- 1789.151 Definitions.
- 1789.152 Policy.
- 1789.153 Borrower funding.
- 1789.154 Eligible borrowers.
- 1789.155 Approval criteria.
- 1789.156 Proposal procedure.
- 1789.157 Consultant contract.
- 1789.158 Implementation.
- 1789.159 Contract administration.
- 1789.160 Access to information.

- 1789.161 Conflicts of interest.
- 1789.162 Indemnification agreement.
- 1789.163 Waiver.
- 1789.164—1789.165 [Reserved]

##### Subpart B—Escrow Account Funding and Payments

- 1789.166 Terms and conditions of funding agreement.
- 1789.167 Terms and conditions of escrow agreement.
- 1789.168—1789.175 [Reserved]

AUTHORITY: 7 U.S.C. 901–950b; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

SOURCE: 61 FR 48606, Sept. 16, 1996, unless otherwise noted.

##### Subpart A—Policy and Procedures With Respect to Consultant Services Funded by Borrowers—General

###### § 1789.150 Purpose.

This part sets forth policies and the procedures for implementing subsection (c) of section 18 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act) which authorizes the Rural Utilities Service (RUS) to use the services of Consultants funded by the Borrowers to facilitate timely action on Applications by Borrowers for financial assistance and other approvals.

###### § 1789.151 Definitions.

As used in this part:

*Administrator* means the Administrator of the Rural Utilities Service (RUS).

*Application* means a request for financial assistance under the RE Act or such other approvals as may be required of the RUS pursuant to the terms of outstanding loan or security instruments or otherwise.

*Borrower* means any organization which has an outstanding loan(s) made or guaranteed by RUS or its predecessor agency, the Rural Electrification Administration (REA) under the RE Act or any organization which has submitted or submits an Application before RUS.

*Consultant* means a person or firm which has been retained pursuant to